A Comparison of Driving While Intoxicated Laws in the United States and Canada

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Abstract
This paper examines the similarities and differences in driving while impaired (DWI) laws in the United States (US) and Canada. Essentially all DWI law in the US is governed by state statutes, while many Canadian policies are a part of the Canadian Criminal Code, set by the national Parliament. The federal government in the US has attempted to use financial incentives in order to encourage states to pass more stringent DWI laws, and in particular, a blood alcohol concentration (BAC) limit for DWI of 80 mg%; open container laws, and more severe sanctions for repeat DWI offenders. Legislative records and history have been reviewed in order to determine dates of passage of laws as well as introductions of policy that failed to become law. Records include text of legislation as well as oral and written testimony. A comparison of the dates of enactment of laws in US states and Canadian provinces was made for BAC limits, administrative per se laws, special BAC limits for young drivers, and sanctions for DWI
Introduction

In the past 40 to 50 years there have been significant advances in raising awareness of drinking and driving and related casualties, identifying response options, implementing interventions and monitoring their impacts. Among the many chronic and acute problems that have been associated with heavy alcohol consumption, it is the drinking and driving arena that has, arguably, attracted the greatest attention involving a combination of prevention efforts, detection, regulatory responses and law enforcement, and epidemiological, psychological and evaluative research. In United States, Canada and a number of other countries a combination of responses has emerged at national, regional and local levels. As a result of increased social concerns about drinking and driving, attitude changes about drinking and driving, and a combination of voluntary action and law enforcement interventions, rates of drinking and driving crashes and incidents have declined in the past few decades.1,2

Ross3 has described three types of countermeasures used to deter drunk driving. Within each type, there are several strategies that have been implemented and tested with varying degrees of success. Law and criminal justice countermeasures focus on deterrence of drunk driving, without necessarily addressing the underlying issues involved. These measures include but are not limited to: lowering of the legal BAC limit for DWI arrests; administrative per se laws that allow for immediate temporary license suspension upon refusal to submit to a BAC test; mandatory treatment or educational programs for convicted drunk drivers; minimum sentences for specific offences or repeated offences; and zero-tolerance laws for people who are under the legal minimum drinking age. Ross states that criminal law has its greatest effect on people who are sensitive to the threat of punishment for offences, as opposed to those who are apprehended for offences. In other words, the perception that punishment will occur has a much greater deterrent effect than the actual occurrence of punishment.

US and Canadian DWI laws differ in that essentially all DWI law in the US is governed by state statutes, and several Canadian policies are a part of the Canadian Criminal Code, and therefore set by the national Parliament. Over the last 10 years, there have been numerous efforts to pass .08 and other DWI legislation in the US and to add additional constraints in Canadian provinces. The legislation includes administrative license suspension, roadside license suspension and special BAC limits for youth. Many of these efforts have failed, while others have passed and been implemented as law. The federal government in the US has attempted to use financial incentives in order to encourage states to pass more stringent DWI laws. In the most recent highway funding legislation, The Transportation Equity Act for the 21st Century (TEA21)2, the US Congress enacted provisions for: lowering the blood alcohol concentration (BAC) for DWI to 80 mg% (.08); prohibiting the presence of open containers of alcohol in the passenger compartment of a vehicle; and stricter sanctions for repeat DWI offenders.

It is estimated that lowering the BAC limit to .08 would save approximately 400-500 lives in the US each year2. Eliminating the presence of open containers of alcohol from passenger compartments of vehicles would work to eliminate driving while drinking alcohol. Specific sanctions for repeat DWI offenders such as the use of interlock devices4, or combinations of
legal sanctions and treatment\textsuperscript{4,5} have been demonstrated to have a significant deterrent effect on repeat offenders. There are no federal DWI laws in the US as there are in Canada, where the Canadian Criminal Code covers the most serious DWI offenses. In the US, the severity of an offense (criminal or misdemeanor) is decided upon at the state level. Another significant difference between the 2 countries is that the minimum legal drinking age (MLDA) is 21 years of age in all US states and the District of Columbia, whereas the MLDA in Canadian provinces is 18 or 19 years of age.

**Methods**

Legislative records and history have been reviewed in order to determine dates of passage of laws as well as introductions of policy that failed to become law. Records include text of legislation as well as oral and written testimony. A comparison of proportions of US states and Canadian provinces that have enacted specific laws was made for BAC limits, administrative per se laws, special BAC limits for young drivers, and open container legislation. While we reviewed the sanctions that are imposed in various states and provinces, the range of sanctions is wide, and is not summarized for this paper.

**Results**

The primary differences between US and Canadian DWI laws are that overall, Canadian laws are stricter, even among individual provinces. There are no states in the US that have a BAC limit for DWI lower than .08, and all states have yet to pass the .08 BAC law. In addition, while all Canadian provinces have open container laws, only 31 (60.9\%) US states have passed these laws. While all US states have a lower BAC for initiation of DWI charges in drivers under the MLDA of age 21, Canadian provinces have lower BAC limits both for underage drinkers and new drivers, regardless of age.

Table 1. provides a comparison of selected DWI laws for the US and Canada. It provides the ratio of states and provinces that have similar laws.
Table 1. Selected US state and Canadian province DWI laws

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<thead>
<tr>
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<th>U.S.</th>
<th>Canada</th>
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<tbody>
<tr>
<td>BAC limit of .10</td>
<td>22/51</td>
<td>0</td>
</tr>
<tr>
<td>BAC limit of .08</td>
<td>29/51</td>
<td>10/10</td>
</tr>
<tr>
<td>BAC limit of .05</td>
<td>0</td>
<td>8/10</td>
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<tr>
<td>BAC limit of .04</td>
<td>0</td>
<td>1/10</td>
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<tr>
<td>Administrative license suspension</td>
<td>48/51</td>
<td>8/10</td>
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<tr>
<td>revocation</td>
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</tr>
<tr>
<td>Graduated licensure</td>
<td>30/51</td>
<td>10/10</td>
</tr>
<tr>
<td>Special BAC level for young drivers</td>
<td>51/51</td>
<td>9/10</td>
</tr>
<tr>
<td>Special BAC level for new drivers</td>
<td>0</td>
<td>8/10</td>
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<tr>
<td>Open container law</td>
<td>31/51</td>
<td>10/10</td>
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<tr>
<td>Stricter repeat offender penalties</td>
<td>24/51</td>
<td>10/10</td>
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There is a great deal of variability in the US states with respect to the seriousness of charges imposed when there are injuries or deaths that result from an alcohol-related crash. In several states, these incidents are classified as misdemeanours, and are not considered serious criminal offences, whereas other states classify them in a way that is similar to serious assaults or homicide. In Canada, these offences are under the Canadian Criminal Code, and are considered to be serious criminal offences that result in the imposition of penalties such as loss of driving privileges for up to 10 years, or up to lifetime in prison if a death occurs.

Discussion
Controversies in recent years have centered around attempts to lower the legal BAC limit; lower BAC limits for drivers under the minimum legal drinking age and lower BAC limits for repeat DWI offenders. Mann, et al. reviewed the impact of lower legal BAC limits in the US, Canada and international jurisdictions and found beneficial effects of the lower limits on traffic safety. There is considerable variation over time and across jurisdictions with regard to these interventions. Many European countries have legal BAC limits that are 50 mg% (.05), and even lower, whereas in North America the BAC limit tends to be higher.

The current attempt to mandate passage of stricter state and provincial laws related to DWI is based in the concept of federal mandates that have been used in the past. In the US, these mandates have tied passage of state legislation to highway funding and have had some success. In 1986, the final rule implementing the National Minimum Legal Drinking Age (MDLA) law was enacted and was effective in ensuring that all states in the US enacted a MLDA of 21. The Intermodal Surface Transportation Equity Act of 1991 also tied federal mandates to highway funding, but was not successful in prompting all states to pass motorcycle helmet legislation. At this point in time, there is some success with the federal mandates in the US, but there is resistance from state legislators who are opposed to such mandates.
This study provides insight into the differences between US and Canadian DWI policy. One primary difference between US and Canadian laws is the existence of federal laws. Canadian provinces have uniformly lower BAC limits, and stricter penalties for DWI violations. Federal legislation in the US that provides incentives for passage of state laws has not yet resulted in across the board passage of .08 BAC limits or open container laws. Canadian provincial laws tend to be more restrictive than the laws in US states, and there appears to be more uniformity across provinces than across states. Further investigation into the differential impact of the policies that have been implemented will provide information on whether there is a need for more restrictive policies in the US. Another area of exploration will include an assessment of the relative differences in DWI offences and crashes in drivers who are below the MLDA, as well as Canadian drivers who are ages 19 and 20, in order to assess differences related to the differing MLDAs in the US and Canada.

References